# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**RSA No. 231 of 1990**

**Reserved on: 5.10.2007**

**Date of decision: 12.10.2007**

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State of H.P. & Anr. ... Appellants

Versus

Harbhajan Singh & Ors. … Respondents

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*Coram :*

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] Yes.

For the appellants: Mr. Vijay Thakur, Deputy Advocate General.

For the respondents: Mr. R.K. Gautam, Senior Advocated with Mr. Avneesh Bhardwaj, Advocate, for respondents No. 1 & 2.

Mr. Rakesh Jaswal vice Mr. N.S. Chandel, Advocate, for respondent No. 4.

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**V.K. Ahuja, J. :**

This is a regular second appeal filed by the appellants against the judgment and decree of the Court of learned District Judge, Una, dated 1.1.1990, vide which the appeal filed by the appellants against the judgment and decree of the Court of learned Sub Judge, Amb, District Una, dated 30.4.1987 for declaration and permanent injunction as against the appellants was affirmed.

Briefly stated the facts of the case are that the respondents as plaintiffs filed a suit for declaration and permanent injunction in

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

regard to the land measuring 99 kanals 16 marlas as detailed in the plaint situated in village Marwari, Tehsil Amb, District Una, alleging that they had purchased the suit land from one Thakur Dass, the original owner in the hissadari shamlat land of Patti vide four register sale deeds dated 21.11.1972 alongwith all standing trees etc. It was alleged that the revenue officials without notice to the plaintiffs wrongly and illegally sanctioned mutation of the suit land in favour of defendant No. 1 vide mutation No. 2919 which is not binding upon the rights of the plaintiffs since they had purchased the suit land. The appellants/defendants pleaded that the suit was barred under Section 10 of the H.P. Village Common Lands Vesting and Utilisation Act, 1974 and that said Thakur Dass from which the plaintiffs had purchased the suit land had no right, title or interest in the suit land and they also denied that the plaintiffs were in possession of the suit land. It was also pleaded that the suit land vested earlier in Gram Panchayat and thereafter in defendant No. 1 under the provisions of H.P. Village Common Lands Vesting and Utilisation Act (hereinafter referred to as 'the Act'), free from all encumbrances and, therefore, the suit was liable to be dismissed.

Issues were framed by the learned trial Court and two of the main issues were as whether the plaintiffs are owners in possession of the suit land and whether the suit is barred under the provisions of 'the Act'.

The suit was decreed by the learned trial Court. Those findings were affirmed by the learned District Judge on appeal. The second appeal filed by the appellants was also dismissed by this Court vide its judgment dated 27.6.1997. On appeal, the Hon'ble Supreme Court accepted the appeal and remanded the case to this Court fresh decision

since no substantial question of law was framed by this Court at the time of admitting the appeal i.e. how the case is before me .

I have heard the learned counsel for the parties and have gone through the record of the case.

The appeal was admitted by this Court on substantial questions of law Nos.1,3 and 4 as formulated at Page-31 of the Paper Book. These substantial questions of law are whether the jurisdiction of the Civil Court is barred under Section of the Act, whether the suit land has vested in the State and whether the suit was time barred.

No substantial question of law was framed in regard to the question as to whether the plaintiffs were owners in possession of the suit land. A perusal of the judgment of the learned trial Court as well as learned first Appellate Court shows that both the Courts below have referred to the evidence led by both the parties orally as well as documentary including the statement of Patwari examined by the plaintiffs who had referred to the entry in the latest copy of Khasra Girdawari and had concluded that the plaintiffs were proved to be in owners in possession of the suit land. Therefore, those findings do not require re-appraisal by this Court and the question formulated at the time of admitting of the appeal only are to be considered.

The learned first Appellate Court had gone into the question in detail as to whether the land stood vested in the Panchayat under Punjab Village Common Lands (Regulation) Act or not and as to whether the land stood vested under the provisions of 'the Act'. The learned first Appellate Court had gone into the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 in detail and had also considered the question as to whether the land in question which was recorded as

shamlat taraf was covered by the definition of shamlat deh or not and whether it could vest in the Panchayat under the provisions of the Punjab Act or not. Thereafter, the learned first Appellate Court had considered the question as to whether such a land which was never used for the benefit of the village community or for common purposes of the village could vest in the State of H.P. or not. It was also observed that under sub-section (2)(b) of Section 3 such land is exempted from vesting in the State of H.P. Thus on interpretation of the provisions of both the Acts, it was concluded by the learned first Appellate Court that land could not have vested in the Panchayat since it was not covered by the definition of shamlat deh and consequently it could not have vested in the State of H.P. A question arises at this stage as to whether the jurisdiction of the Civil Court was barred to consider this question as to whether the land had vested in the Panchayat or in the State Government and as to whether this question could be determined by the Civil Court or was to be determined by the Collector under the provisions of 'the Act'.

I may refer to the decision of Hon'ble Apex Court in **Ram Singh and others** Vs. **Gram Panchayat Mehal Kalan and others**, **(1986) 4 Supreme Court Cases 364**. The provisions of Section 13 of the Act which are quite similar to the provisions of Section 10 of the Act were considered by their Lordships and reference was also made to the provisions of the Punjab Village Common Lands (Regulation) Act. It was clearly laid down by their Lordships that it will not be possible in the circumstances for the Civil Court to make a declaration in favour of the plaintiffs without deciding the question whether the property in question was shamlat deh or not and whether it belonged to the Panchayat or not. In that case the plaintiffs had claimed to be the owners alongwith others

of the suit land and had avoided to seek a declaration that the suit land was not shamlat deh. They had, however, questioned the correctness of the entries in the revenue record which showed that the Panchayat was entitled to the suit land. It was observed that the plaintiffs cannot by drafting their plaint cleverly by not claiming a declaration that the land in question was not shamlat deh confer jurisdiction on the Civil Court when by virtue of Section 13 of the Act the jurisdiction of Civil Courts to try such suits had been taken away. It was finally concluded by their Lordships that the questions had to be decided by the Collector only under Section 11 of the Act and not by the Civil Court whether suit land was a part of shamlat deh.

This decision was considered by a Division Bench of this Court in **Gram Panchayat Khunyara etc.** Vs. **State of Himachal Pradesh etc.**, **1978 Indian Law Reports (Himachal Series) 225**, wherein it was held by this Court that the Collector concerned will enquire into the objections, if and when raised, by the petitioners against the vesting of their lands in the light of the definition of the word "land".

The above decision of the Apex Court was also considered by learned Single Judge of this Court Mr. Justice Devinder Gupta in **Dalip Singh and others** Vs. **State of H.P. and others**, **1992(1) Sim. L.C. 320**, and a reference was made to the decision of Apex Court and it was clearly elaborated that the question as to whether the land had vested in the State or not has to be decided by the Collector by holding a summary enquiry under the provisions of the Act. This enquiry is envisaged at the time a notice is issued by the Collector before taking possession under the provisions of the Act and when a question is raised before the Collector by the persons recorded in possession or otherwise

i.e. at the time of taking of possession by the Collector under the provisions of the Act. The plea was taken that since no order passed by the Collector has been challenged by the plaintiffs, the jurisdiction of the Civil Court was not barred. However, a combined reading of these decisions clearly shows that the stage of passing of an order by the Collector had not come since he had not taken any steps for taking possession of the land and had not issued any notice to the persons in possession i.e. the plaintiffs. However, a plea could be raised by the persons in possession, namely, the plaintiffs before the Collector also who had to determine this question under the provisions of the Act. The above decisions are very clear that whether an order passed by the Collector is being challenged or not but the fact remains that the mutation attested in favour of the State Government after the passing of the Act is being challenged and by cleverly drafting of the plaint no specific relief has been sought that the land has not been vested in the State of H.P. and until and unless that question is determined, no relief of declaration in regard to ownership can be granted in favour of the plaintiffs. This decision of the Apex Court and other decisions were also considered by learned Single Judge (Mr. Justice Kuldip Singh) in an unreported decision in **Chandermani Sharma** Vs. **State of H.P. & Anr.** in FAO(Ord.) No. 95 of 2001, decided on 16.7.2007, in which also a reference was made to the above decisions and it was finally concluded that the question has to be decided by the Collector and Civil Court cannot go into the question whether the land is shamlat or not. Section 10 of the Act puts a bar on the Civil Court to go into the question of vesting of land under the Act in the State and, therefore, the Civil Court cannot determine the question whether the suit land is shamlat land or not.

It follows from the above discussion that the steps had to be taken by the Collector under Section 14 of the Act for taking possession from the plaintiffs under the provisions of the Act, but it appears that no steps may have been taken by the Collector since the matter was subjudice before the Civil Court. In the alternative, the plaintiffs never applied before the Collector under the provisions of the Act that the land has not vested in the Panchayat and then in the State Government and, therefore, that question has not been decided so far which question falls in the domain of the Collector only to decide whether the land has vested in the Panchayat and then in the State Government under the provisions of both the Acts. The Civil Court cannot determine this question. Therefore, the findings of the learned trial Court affirmed by the learned first Appellate Court that the suit land has not vested in the State Government are liable to be set aside and that question is left open to be decided by the Collector irrespective of any observation made in regard to vesting by the learned first Appellate Court or by this Court in referring to the findings of the learned first Appellate Court.

Applying the decision in Dalip Singh's case and the findings recorded by both the Courts below that the plaintiffs have been proved to be in possession, the plaintiffs shall not be dispossessed except in accordance with the law under the provisions of the H.P. Village Common Lands Vesting and Utilisation Act and till then they are entitled to remain in possession of the suit land. It is for the Collector to initiate proceedings under the provisions of the Act for taking possession from the plaintiffs and decide the question as to whether the land had vested in the Panchayat and then in the State Government if such question is raised before him. The appeal filed by the appellants is partly

allowed to this extent that the respondents are only entitled to the relief that they shall not be dispossessed except in accordance with law. The appeal filed by the appellants is partly allowed to this extent that the plaintiffs are not entitled to relief of declaration granted in their favour by both the Courts below. The parties are left to bear their own costs. Decree sheet be prepared accordingly. Records be sent to the concerned Court(s).

**( V.K. Ahuja ),**
**Judge**

**October 12, 2007**
**(BSS)**